

## REMARKS

The foregoing amendments do not involve new matter. Claim 5 has been amended to clarify that the particulates are added to the drum over the stated period. Claim 25 has been amended to correct a typographical error. New claims 175 and 176 are claims 14 and 19, respectively, in independent form. New claims 177-199 are based respectively on original claims 44-50, 52-58, 62-63 and 67-73. The new claims are all within the subject matter previously elected in response to the restriction requirement.

The allowability of claims 14 and 19 is noted with appreciation.

The outstanding Office Action is designated as a final rejection, ostensibly because Applicants' amendments necessitated the new grounds of rejection. While this may be true for some of the claims, Applicants did not amend claims 27-33. In the prior Office Action claims 27-33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0117108 (Pentecost). That rejection has been dropped in the current Office Action, and a new rejection imposed. Since the new rejection of claims 27-33 was not necessitated by any amendment by Applicants, the finality of the outstanding Office Action should be withdrawn.

In the outstanding Office Action claims 1-13, 15-18 and 20-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,501,758 (Morris). This rejection is respectfully traversed. Claim 1 is directed to a process for producing a coated comestible, and requires the following three steps:

- a) placing a batch of comestible cores in a coating drum having an internal drum length of at least 4 feet;
- b) applying one or more coating syrups in multiple aliquots, with drying between applications, to build up a coating on the cores; and
- c) adding a quantity of particulates to the cores in the coating drum after the final aliquot of coating syrup has been introduced into the drum but before the final aliquot of coating syrup has dried, such that the particulates are uniformly applied across the length of the bed and stick to the coating on the cores.

Morris discloses a method of making honey coated peanuts. In Example 1, raw peanuts are added to a revolving drum. An aqueous mixture of lactose and maltodextrine is slowly added to the rotating nuts until the nuts are evenly coated. A mixture of sucrose, wheat starch and dried honey is added, and the nuts tumbled until they are evenly coated. The nuts are then roasted.

The Office Action recognizes that Morris does not disclose a drum having an internal drum length of at least 4 feet, but suggests that it would have been obvious to use a large coating drum to coat more peanuts. Even if this were true, the reference does not teach the rest of the elements of claim 1, nor would it have been obvious to modify the reference to include those elements. Specifically claim 1 calls for applying one or more coating syrups in multiple aliquots, with drying between applications, to build up a coating on the cores. There is no disclosure in Morris of applying the aqueous mixture in aliquots, drying the peanuts between such applications, and building up a coating. The reference instead teaches simply adding the liquid until the nuts are coated and then adding the powder. Thus Morris does not apply syrup in multiple aliquots with drying between applications.

Second, claim 1 requires adding a quantity of particulates to the cores in the coating drum after the final aliquot of coating syrup has been introduced into the drum but before the final aliquot of coating syrup has dried. In Morris, since the liquid is not added in aliquots, first applications of solution cannot be dried before a final aliquot is added, with the powder added before the final aliquot has dried. Further, there is no reason to modify the process of Morris to add syrup in aliquots with drying between applications, and building up a coating as required by claims 1. Claim 1 is directed to a process where the coating syrup is used to build up a coating layer on a core, which is completely different than the use of the aqueous mixture in Morris, which is applied strictly so that the powder mixture will adhere to the peanuts before they are roasted. Thus claim 1, and claims 2-3 and 5-13 dependent thereon, are patentable over Morris.

Claims 2 and 3 are further patentable over Morris. The Office Action asserts that it would have been obvious to modify the nuts of Morris for holiday celebrations by using colored sugar or starch in the dry coating. However, there is no indication of where this suggestion might be found in the prior art. Thus it is not possible to tell whether an

effort to decorate the nuts really would have been obvious, and if the decoration process would have used colored speckle particulates.

Claim 5 is further patentable over Morris. There is no suggestion of adding the particulates to the cores for a period of time that lasts between about 30 seconds and 5 minutes. Rather in Morris the powder material appears to be added all at once.

Claims 8 and 9 are further patentable over Morris. The Office Action asserts that it would have been obvious to "provide particulate distribution of peanuts at specific places in the drum" to assure uniform coating of the nuts. However, claims 8 and 9 do not call for distribution of the cores at specific places, but rather that the particulates are applied through multiple particulate distributors within the drum, and specifically that there be at least one distributor for every two feet of drum length. There is no suggestion of how Morris could be modified to provide multiple particulate distributors within the drum.

Claims 10 and 11 are further patentable over Morris. Claim 10, and claim 11 dependent thereon, require that the quantity of particulates is divided into multiple portions prior to its addition to the drum. Morris does not teach this, nor would it have been obvious to modify the process of Morris to divide the powder material into multiple portions before adding it to the drum. Claim 11 calls for the particulates to be divided using a vibratory pan. The Office Action states that it would have been obvious to use a vibratory pan to move and distribute the nuts from one place to another. However, claim 11 requires that a vibratory pan is used to divide the particulates into portions, not the cores.

Claim 13 is further patentable over Morris. There is no reason to modify the process of Morris and use it to coat confectionery cores instead of peanuts.

Claim 15 requires applying aliquots of coating syrup to the cores to build up a coating on the cores, and applying speckle particulates after the final aliquot of coating syrup has been introduced into the coating apparatus but while the cores are still wet from the application of coating syrup. As noted above, Morris does not disclose applying aliquots of coating syrup to build up a coating, nor would it have been obvious to modify Morris in that regard. Further, while Morris applies a powder to the peanuts, there is no suggestion to apply speckle particulates. Thus claim 15, and claims 16-18

and 20-21 dependent thereon are patentable over Morris. Further, claims 16-18 and 20-21 are further patentable. Morris does not disclose, nor would it have been obvious to modify Morris to apply particulates at a level of between about 0.6 and about 1 gram per 1000 grams of coated cores, as required by claim 16; or to apply the speckle particulates in less than 1 second per 1000 grams or less than 0.5 seconds per 1000 grams of coated cores, as required by claims 17 and 18; or for the aliquots of syrup to produce a hard crunchy coating as required by claim 20; or for the aliquots of syrup to produce a soft panned coating as required by claim 21.

Claim 22 also requires applying aliquots of coating syrup to build up a coating on the cores, and applying particulates to the cores after the final aliquot of coating syrup has been introduced into the coating apparatus but while they are still wet with coating syrup. Further, claim 22 requires that the particulates are applied from multiple, spaced apart, particulate distributors within the coating apparatus, the application of the particulates occurring simultaneously from each of the multiple particulate distributors. Morris and the Office Action are silent on this feature. Thus claim 22 is patentable over Morris, along with claims 23-26 dependent thereon.

Claims 23-26 are further patentable in requiring the following features that are not found in, or obvious in view of, Morris: the multiple particulate distributors comprise multiple hoses each having a discharge outlet within the coating apparatus (claim 23); each discharge outlet includes a conical diverter, and the particulates are diverted thereby as they are discharged from the hose (claim 24); the multiple particulate distributors comprise at least four distributors (claim 25); and a wax coating is applied to the coated cores over the particulates (claim 26).

Claim 27 also requires applying aliquots of coating syrup to build up a coating on the cores and dividing a predetermined total amount of particulates to be applied to the coated cores into at least three portions of approximately equal size; and applying each of the portions of particulates to the coated cores simultaneously from a different particulate distributor in the coating apparatus while the coated cores are being tumbled. In addition to the fact that Morris does not apply the coating solution in aliquots to build up a coating on the cores, Morris supplies all powder at once in an unspecified fashion. Furthermore, with the Morris apparatus, it would not be possible to

divide a predetermined total amount of particulates into at least three portions of approximately equal size, as there is no place to separate the powder material into portions. Claim 27, and claims 28-33 dependent thereon, are thus patentable over Morris.

Claims 28-33 are further patentable in requiring the following features that are not found in, or obvious in view of, Morris: the total amount of particulates is divided by dividers defining separate lanes in a sloped, vibratory pan (claim 28); each of the particulate portions is pneumatically conveyed to the coating apparatus by a separate hose (claim 29); the total amount of particulates is still being divided into the portions when the first part of each portion starts to be applied to the cores in the coating apparatus (claim 30); at least 90% of the total particulates are applied to the coated cores at a uniform rate of amount per unit of time (claim 31); at least 90% of the particulates are applied to the coated cores at a uniform rate of between about 0.002 grams/second and about 0.006 grams/second per 1000 grams of coated cores (claim 32); and the speed at which the coated cores are tumbled during the application of particulate is slower than the speed at which the cores are tumbled during application of the aliquots of coating syrup (claim 33).

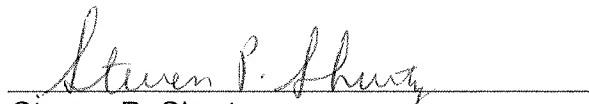
Claim 34 also requires applying aliquots of coating syrup in successive operations to build up a coating on the cores, and applying the quantity of speckle particulates to the cores in the coating apparatus after the final aliquot of coating syrup has been introduced into the coating apparatus but while the coating syrup is still wet. Further, claim 34 requires the built up coating to include a light colored pigment, and the speckle particulates to have a contrasting color. These features are not taught in, or obvious in view of Morris. Claim 34, along with claims 35-43 dependent thereon, are thus patentable over Morris.

Claims 35-40 and 42-43 are further patentable. Morris does not disclose or suggest the particle size and color limitations of the speckle particulates found in claims 35-37 and 39-40, or that the coating solution includes titanium dioxide, as required by claim 38. Claim 42 requires the speckle particulates to comprise color and a material selected from the group consisting of gum arabic and sodium alginate. Further, claim 43 requires the speckle particulates to comprise about 0.2% to about 2% color. The

powder material of Morris does not have either of these features, nor would it have been obvious to modify Morris to use a speckle particulate as specified by these claims.

It is believed that the case is in condition for allowance. An early notice to that effect is respectfully requested.

Respectfully submitted,

  
\_\_\_\_\_  
Steven P. Shurtz  
Registration No. 31,424  
Attorney for Applicants

Date: June 16, 2009  
BRINKS HOFER GILSON & LIONE  
405 South Main Street  
Suite 800  
Salt Lake City, Utah 84111  
(801) 355-7900  
Direct Dial: (801) 333-7906